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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/579,694 05/26/00 HAYEK

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KILLWORTH GOTTMAN HAGAN & SCHAEFF, LLP  
ONE DAYTON CENTRE, SUITE 500  
ONE SOUTH MAIN STREET  
DAYTON OH 45402-2023

EXAMINER

HENLEY III, R

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

04/11/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/579,694**

Applicant(s)  
**Michael G. Hayek**

Examiner  
**Ray Henley**

Group Art Unit  
**1614**



☒ Responsive to communication(s) filed on Apr 4, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

- ☒ Claim(s) 1-8 and 10 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 1-6 is/are allowed.
- ☒ Claim(s) 7 and 8 is/are rejected.
- ☒ Claim(s) 10 is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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**CLAIMS 1-8 AND 10 ARE PRESENTED FOR EXAMINATION**

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Applicant's amendment filed April 4, 2001 has been received and entered into the application. Accordingly, claim 9 has been canceled. In view thereof, the objection/rejection of claim 9 as set forth in the previous Office action dated January 25, 2001 is withdrawn.

***Claim Objection***

Claim 10 remains objected to as depending from a rejected base claim (see below), but is otherwise in condition for allowance.

***Claim Rejection - 35 USC § 102***

Claim 7 remains rejected under 35 U.S.C. 102(b) as being anticipated by Shapira (U.S. Patent No. 5,290,605), already of record, for the reasons of record as set forth in the previous Office action at pages 2-3, as applied to claims 7 and 9.

Applicant's argument that the patentee fails to require the presence of all of the ingredients listed has been carefully considered, but fails to persuade the Examiner of error. The specific combination claimed is a combination allowed for by Shapiro and is clearly within the four corners of the reference. Accordingly, the rejection is deemed to remain proper.

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***Claim Rejection - 35 USC § 103***

Claims 7 and 8 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Shapira, as above, for the reasons of record as set forth in the previous Office action at page 3, as applied to claims 7-9.

Applicant has argued that there is no teaching or suggestion in Shapira that would lead one to use the specific combination of vitamin E, lutein and beta-carotene in a pet food for the purpose of enhancing immune response. However, it is not germane that the reference fails to provide a teaching of a pet food or use in enhancing immune response because such are intended uses and do not represent any physical feature of the claimed composition that is not found in the prior art. Also, the reference clearly highlights each of the claimed constituents and provides a clear teaching of their combination, i.e., "It should be understood that the addition of Vitamins C and E or selenium to the carotenoids-containing drink has a synergistic effect" (column 2, lines 7-8) and "Normally a carotenoids mix will contain a number of carotenoids such as [beta]-carotene....lutein...etc." (column 2, lines 23-26). Giving the teachings of the patentee, the Examiner is unable to concur with applicant.

Accordingly, for the above reasons, the claims are deemed to remain properly rejected.

***Allowable Subject Matter***


Claims 1-6 are deemed to remain in condition for allowance because the prior art fails to teach or suggest the presently claimed methods for enhancing the immune response, optimizing immune cells in dog or optimizing vaccine recognition in a dog.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.



RAYMOND HENLEY, III  
PRIMARY EXAMINER  
GROUP 1200

Henley; rjh  
April 10, 2001